Then with the consent of his Licensor, the Government, he gives up possession of the remainder of the land to the plaintiff so that the plaintiff has never been in possession of the area of land in dispute, and on my ruling has no title thereto.

Now although the rights of the defendant may be no higher than Mr. Cooper with his usual skill has put to me, yet I find it extremely difficult to hold that the defendant in possession has no right. Suppose Tan Juan had sought in an action against this plaintiff to recover possession of the area now claimed, would not the defendant succeed if he pleaded against Tan Juan, as is the fact, that he had paid $1,150 in respect of the price and held a contract to purchase which he was ready and willing to perform? It seems to me that the plaintiff stands in no better case than Tan Juan, he being, in my view, a purchaser for value with notice of the rights of the defendant.

I hold therefore that the plaintiff is not entitled to recover the small area of land in dispute, and judgment will be entered dismissing the plaintiff's claim with costs.

I should like to make it clear that if the plaintiff being the assignee of Tan Juan completes his title of the whole area of this land, and tenders a proper conveyance to the defendant, he may very well have, as assignee of Tan Juan, a good claim against the defendant to recover the balance of the purchase price, though I express no opinion as to that because the question does not arise in the suit.

Judgment for the defendant with costs.

From the above judgment the plaintiff appealed to the Court of Appeal and the appeal came on for hearing before Sproule, Ag. C.J. and Terrell, J. After hearing the arguments on both sides, their Lordships upheld the decision of Thorne, J. and dismissed the appeal with costs.

Appeal Dismissed.

Knowles, (*Cooper* with him), for the Appellant.

Goho, for the Respondent.

[ORIGINAL BANKRUPTCY JURISDICTION]

IN RE H. E. CORDEIRO

[SINGAPORE BANKRUPTCY No. 756 OF 1931]

Bankruptcy—contribution to Provident Fund —Official Assignee's right to call in.

A Provident Fund, towards which an employee contributes a portion of his salary and the employer four times as much together with interest periodically added on thereto, is a fund of which the employer is a voluntary trustee. Upon the bankruptcy of the employee, the Official Assignee is entitled to the total amount of the fund.

In re Samykanoo, 1927 S.S.L.R. 25, distinguished. Principles in Gosling v. Gosling (Joh. 172), Wharton v. Masterman (1895) A.C. 186 and Gee v. Liddell (35 Beavan 621) applied.

Motion by the Official Assignee for an order for payment by the Hongkong and Shanghai Banking Corporation, Singapore, of a sum of £2,550.10.5 being the total amount standing to the credit of the Bankrupt in respect of a Provident Fund created by the Bank for the benefit of its employees and to which both the employer and the employee contributed.

E. N. Taylor, Assistant Official Assignee.

Smith for the Bank.

Knowles for supporting creditors.

The facts and arguments are sufficiently set out in the Judgment.

Cur. Ad. Vult.

11.4.32

COBBETT, J.—The facts which are agreed are simple. The Hongkong Bank have a provident fund scheme under which an approved employee is permitted to benefit after 5 years service. Once an employee is permitted to join 5% is deducted from his salary and four times this amount is contributed by the Bank which also periodically adds interest on the total the whole being credited to the employee. It is stated that the Bank never pay out the amount of contributions until the termination of the clerk's services.

The Bankrupt H. E. Cordeiro joined the Bank in 1908. In 1913 he joined the Provident Fund. On October 23rd 1931 he was adjudicated Bankrupt. On December 31st, 1931, the Bank by letter notified him that there was a sum of £2,550.10.5 then standing to his credit at that date in the officers Provident Fund. The Official

Assignee now seeks to compel the Bank to pay this sum to him. He is supported in his application by a creditor. The Bank opposes the application.

The argument fell under 3 heads. By the Official Assignee that the Bank had created itself voluntarily a trustee of the money for the Bankrupt and that the *cestui que trust* had a right to claim payment of the fund at any time his interest in the fund being absolutely vested and there being no gift over or intermediate gift of income.

By the Creditor that there was a contract by the Bank to pay the money the consideration being the payment by the employee of a portion of his salary to the Bank and the Bank having the opportunity of making use of it.

By the Bank that there was no consideration for a contract and therefore no contract, that it was in reality a bonus. As an alternative it was said that there was no trust but the relationship of Banker and Customer and therefore Debtor and Creditor.

I accept the Official Assignee's argument that the Bank has voluntarily created itself a trustee of the sum for the Bankrupt.

I consider the solution of the difficulty is to be found in the letter of the 31.12.31. The relevant part of this reads as follows:—

"31.12.31.

Dear Sir,

We beg to inform you that the balance standing to your credit in the officers Provident Fund at this date amounts to £2,550.10.5 (Sterling)."

This is a definite statement by the Bank that this sum has been given to the employee. The gift is an accomplished fact and therefore the Bank holds as trustee. It seems to me that although this may well be in the nature of a bonus for which there is no consideration yet once the bonus is declared the donor becomes a voluntary trustee of it for the donee until it is actually handed over to the donee. To quote Underhill on Trusts page 40, paragraph 1 "It is a well-known maxim that equity gives no assistance to volunteers; but like other epigrammatic expressions it cannot be accepted literally. In order to understand the rules of equity with regard to volunteers, the distinction between legal rights and equitable rights must be kept in mind. The true principle is, that a court of equity will give no assistance to a volunteer against the donor to perfect an inchoate intention to confer a bounty. The would-be donor can be bound only in one of two ways. He is bound, at common law, if he has made a gift to the object of his bounty, or to a trustee for that object, or has covenanted under seal either with that object, or with a trustee for that object, to do something for breach of which a common law court will give damages; and in either case equity will enforce the trust **Against the Trustee,** and if the trustee refuses to enforce his legal rights against the donor the court will authorise the beneficiary to use his name. A donor is also bound in equity if he has declared **Himself** a trustee for the equity regards a declaration of trust as the equitable equivalent of a common law gift." And see also *Gee* v. *Liddell,* 1866, 35 Beaven 621.

The case is therefore easily distinguishable from *In re Sammy Kanno,* 1927 S.S.L.R. p. 35, which was a case of a purely discretionary payment.

I do not consider there is any contract and indeed it is difficult to find any consideration for the Bank's contribution.

If then the Bank is trustee the question arises whether the *cestui que trust* can demand payment of the trust fund when he thinks fit. I must hold on the authority of *Gosling* v. *Gosling* (Joh. 272) and *Wharton* v. *Masterman* (1895 A.C. 186) that he can do so. To quote a part of the judgment in *Gosling* v. *Gosling* which is also quoted by Lord Herschell in his judgment in *Wharton* v. *Masterman* p. 192, "The principle of this Court has always been to recognise the right of all persons who attain the age of twenty-one to enter upon the absolute use and enjoyment of the property given to them by a will, notwithstanding any directions by the testator to the effect that they are not to enjoy it until a later age:—unless during the interval the property is given for the benefit of another. If the property is once theirs, it is useless for the testator to attempt to impose any fetter upon their enjoyment of it in full so soon as they attain twenty-one. And upon that principle, unless there is in the will, or in some codicil to it, a clear indication of an intention on the part of the testator not only that his devisees are not

to have the enjoyment of the property he has devised to them until they attain twenty-five, but that some other person is to have that enjoyment—or unless the property is so clearly taken away from the devisees up to the time of their attaining twenty-five as to induce the Court to hold that as to the previous rents and profits there has been an intestacy—the Court does not hesitate to strike out of the will any direction that the devisees shall not enjoy it in full until they attain the age of twenty-five years."

It may well be that the Bank has an interest in the fund during the time the employee continues in the Bank (as for instance as a security against possible defalcations) which would take the case out of the authority of *Gosling* v. *Gosling* but such a case has not been raised on the Bank's behalf and I am not able to consider it.

The Official Assignee standing as he does in the shoes of the Bankrupt has in my opinion a right to call for payment of the money.

The Bank have however advanced to the Bankrupt a sum of about $4,500 but I have not been told exactly what is due to the Bank in this respect. I consider that this sum is in effect a part payment to the Bankrupt of the money held in trust for him and should therefore be deducted from the amount payable to the Official Assignee.

I therefore order that the Bank do pay to the Official Assignee the sum of £2,550.10.5 less such sum as has been already advanced to the Bankrupt.

Official Assignee's costs to be paid by the Bank. Stay of execution for 14 days and if notice of appeal given then until further order.

Order accordingly

Solicitors for the Creditors—*Braddell Bros.*

Solicitors for the Bank—

Donaldson & Burkinshaw.

[POLICE COURT SPECIAL JURISDICTION]

SHAIK SAHIB BIN OMAR BIN ABDULLAH BIN OMAR MAKARIM

v.

THE MUNICIPAL COMMISSIONERS

[S'PORE DISTRICT COURT CASE No. 3254 OF 1931]

Damage to land—Compensation—Summary jurisdiction of District Court—"Injurious affection"—Benefit by construction of drain—Betterment—Commissioners not entitled to set-off—Principle of assessing damages—Laches—Ordinance No. 135 (Municipal) Secs. 129 & 362—Land Acquisition Act, S. 63—Victoria Lands Compensation Act of 1859, S. 35.

Where a piece of land is detrimentally affected by the construction through it of a large drain by the Municipal Commissioners, it is no answer to a claim by the owner for compensation that the value of the land has improved as a result of their action as betterment or enhanced value cannot be set off against damages.

The delay on the part of the owner of the land in commencing proceedings against the Municipality, unless the claim is one that is barred by limitation, does not deprive him of the right of action.

The facts and arguments fully appear from the judgment.

Laycock for the Claimant.

Robinson for the Municipal Commissioners.

Cur. Ad. Vult.

9.6.32.

DODD, D.J.—This is a claim by the owner of land known as Lot 340 in Changi Road against the Municipal Commissioners, Singapore, for compensation for damage to his land by the building through it of a large drain.

Section 129 of Ordinance 135 gives the Commissioners power to build such a drain and lays down that full compensation shall be made for any damage done, and Section 362 gives a District Court summary power to decide any question of liability and the amount of any compensation or damages it may direct to be paid.